

Administrative Order



Administrative Order No.: 3-3

Title: Black business enterprise program for the purchase of goods and services

Ordered: 4/8/2003

Effective: 4/18/2003

AUTHORITY:

Sections 4.02 and 4.03 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-8 of the Miami-Dade County Code.

POLICY:

- A. Except where federal or state laws or regulations mandate to the contrary, this Administrative Order governs the purchases, funded in whole or in part by County funds, by all Miami-Dade County departments and agencies of the following items:
 - 1. Goods;
 - 2. Services including but not limited to:
 - a. Personal, Business, Miscellaneous Repairs, Motion Pictures, Amusement and Recreational, Health, Educational and Social services; and
 - b. Professional services including but not limited to accounting, health care, consulting and management services.
- B. This Administrative Order does not apply to the purchase under twenty-five thousand dollars (\$25,000), lease or rental of real property; licenses and permits; concessions; franchise agreements; bond counsel; attorney and/or legal services; and investment banking.
- C. Applicability to the Public Health Trust:

The Public Health Trust shall establish administrative procedures consistent with this Administrative Order to govern the application of contract measures to its purchases of goods and services, except for construction services.

I. DEFINITIONS:

- A. This Administrative Order incorporates completely the definitions listed in Ordinance 94-95. Those definitions, as well as additional terms necessary for the understanding

of this Administrative Order, are listed below:

1. Approval Letter means a document issued by the Department of Business Development (DBD) at the request of a Black Business Enterprise (BBE) or bidder, based on the written representations of the BBE or a bidder, that finds a specified activity or scope of work consistent with normal industry practice.
2. Available or Availability means to have, prior to bid submission, the ability to provide goods or services under a contract, by having:
 - a. reasonably estimated, uncommitted capacity;
 - b. all necessary licenses, permits, registrations and certifications;
 - c. the ability to obtain bonding that is reasonably required consistent with normal industry practice; and
 - d. the ability to otherwise meet bid specifications.
3. Bid means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.
4. Bidder means any person, partnership, corporation or other business entity that submits a bid.
5. Bid Preference means an amount deducted from the total bid price in order to calculate the bid price to be used to evaluate the bid.
6. Bid Price means the amount of the bid in accordance with the method of award outlined in the bid document, where the award is based on price per item, price in the aggregate, price by group, price by zone, combination of award methods, or any other method defined within the bid document under review.
7. Black means a person who is a citizen or lawful resident of the United States and who has origins in any of the Black racial groups of Africa.
8. Black Business Enterprise or BBE means a business that:
 - a. is owned and controlled by one or more Blacks individuals;
 - b. has its principal place of business in Miami-Dade County; and
 - c. is certified in accordance with the Code of Miami-Dade County and this Administrative Order.

9. BBE Selection Factor means an element specified in bid documents that designates as one criteria for choosing among bids that the bidder is:
 - a. an BBE; or
 - b. a joint venture owned and controlled by a BBE;
 - c. a non-BBE that demonstrates significant utilization of BBEs in accordance with subsection XV,5 below.
10. Board means the Miami-Dade County Board of County Commissioners, Miami-Dade County, Florida.
11. Broker means an individual or business that acts as a contact for the purchase of goods or services from a supplier and transfers funds to a non-BBE in a manner that does not add economic value to the purchase, except where such conduct is normal industry practice.
12. Certification List means a list maintained by the Department of Business Development (DBD) that contains the names and addresses of currently certified BBEs, sorted by trade, service, and/or commodity.
13. Commercially Useful Function means contractual responsibility for the execution of a distinct element of the work of a contract by a business enterprise and the carrying out of its contractual responsibilities by actually performing, managing, and supervising the work involved other than acting as a broker. The determination of whether an activity is a commercially useful function shall include the evaluation of the amount of work subcontracted, normal industry practices, the skills, qualifications, or expertise of the enterprise to perform the work; whether the business owner himself or herself performs, manages, and/or supervises the work involved; and other relevant factors.
14. Compliance Monitor means the Director of the Department of Business Development or his or her designee assigned to review compliance with Ordinance 94-95 and this Administrative Order.
15. Contract means an agreement covered by this Administrative Order proposed by County or Public Health Trust staff, or approved by the County Commission or Public Health Trust in any of the following classes:
 - a. Procurement of goods and services not included in the class below;
 - b. Professional services including but not limited to accounting, health care, consulting and management services.

Contract does not mean an agreement to purchase, lease, or rent real property;

grant licenses, permits, or franchises; operate concessions; or make grants.

16. Contract Measure means a set-aside, or a subcontract goal, or a project goal, or a bid preference, or a selection factor, singly or in or any combination.
17. Contracting Officer means the person assigned under a contract, usually a Department Director or his or her designee, who has primary responsibility to monitor the contract and enforce contract requirements.
18. County means Miami-Dade County, Florida, a political subdivision of the State of Florida.
19. Debar means to exclude a vendor, its individual officers, its shareholders with significant interests, or its affiliated businesses from county contracting and subcontracting for a specified period of time, not to exceed five (5) years.
20. DBD means the Miami-Dade County Department of Business Development.
21. DPM means the Department of Procurement Management
22. Employment Data Report means a document completed by a subcontracting BBE, and submitted monthly by the successful bidder on a contract with goals providing information regarding the number, gender, race and ethnicity of the BBE's employees.
23. Goods mean any tangible product, material or supply that is not a service.
24. Joint Venture means an association of two or more persons, partnerships, corporations, other business entities or any combination of the above, at least one of which is an BBE, certified in accordance with the relevant ordinance, that is lawfully established to carry on a single business activity that is limited in scope and duration.
25. Joint Venture Agreement means a document submitted to DBD by a joint venture that provides information regarding the nature of the joint venture.
26. Letter of Intent means a letter signed by a subcontracting BBE, detailing the scope and dollar value of the work to be performed by the BBE, for the successful bidder on a contract with goals.
27. Owned and Controlled means a business that is at least fifty one (51) percent owned by one or more Blacks or, in the case of a publicly owned business, at least fifty one (51) percent of the stock of which is owned by one or more Blacks, and whose management and daily business operations are controlled by one or more such individuals. The determination of whether an owner has demonstrated such control shall include an evaluation of the following:

- a. The owner's experience in the industry in which certification is sought;
 - b. The owner's independence in making business policy and day-to-day operational decisions.
 - c. The owner's technical competency or knowledge of technical requirements in the industry in which certification is sought; and
 - d. Other relevant factors.
28. Participation Goal means a percentage objective for increasing participation of certified and registered BBEs in County contracting opportunities based on the percentage of Black-owned businesses in Miami-Dade County as reported by the Survey of Minority-Owned Business Enterprises by the U.S. Department of Commerce, Bureau of the Census, or its equivalent, and such other factors as this Administrative Order and the County Commission may establish.
29. Professional Services means accounting, consulting and management services.
30. Project Goal means a proportion of a total contract value stated as a percentage to be awarded to BBEs in contracts that create a pool of qualified vendors from which the County selects pool members to perform the work of the contract.
31. Reasonableness means a bid, for the same scope of work, is within 25% of the bid of comparably-sized non-BBE firms.
32. Registered BBE means a business that has registered with the relevant county agencies to compete for county contracts and has declared, by registration for statistical purposes, to be Black-owned, but has declined to be certified or to participate in the BBE program. If no registration system showing such declaration exists, this term means a business that has bid on a County contract and has declared to County staff or in a public document that it is Black-owned.
33. Review Committee or RC means the committee established by the County Manager to review proposed projects for the application of contract measures.
34. Schedule of Participation means a form contained in the bid documents of a contract with goals on which bidders list at the time of bid submission all Black-owned business enterprises to be used to meet the goal, the scope of work each will perform, including the good or services to be provided, and the dollar value of such work.
35. Services mean maintenance, alteration, or repair of a public or private improvement or any performance of work offered for public or private consumption that does not consist primarily of goods.

36. Set-aside means the designation of a given contract for competition solely among BBEs.
37. Significant Utilization means purchases of goods or services from BBEs by a bidder in the preceding twenty-four (24) months that:
 - a. Were not required under a governmental and or contract or minority business enterprise program; and
 - b. Were not a nominal amount relative to the bidder's purchases of goods and services in Miami-Dade County, the bidder's overall purchases of goods and services, and the availability of BBEs; and
 - c. Were made pursuant to the bidder's systematic efforts to eliminate discrimination against BBEs in its purchases of goods and services in Miami-Dade County.
38. Subcontractor Goal means a proportion of a total contract value stated as a percentage to be subcontracted to an BBE to perform a commercially useful function.
39. Successful Bidder means the bidder to which the contract is awarded.
40. Unavailability Certificate means a document signed by an BBE stating that the BBE is not available to participate on a specific project at a specific time.
41. Utilization Report means a report completed by the successful bidder on a contract with goals and submitted monthly listing all work performed in the past month by the BBE identified on the Schedule of Participation and all expenditures made in the last month to the identified BBE.
42. Work means the provision of goods or services.

II. CERTIFICATION:

A. DBD RESPONSIBILITIES.

1. DBD is the County agency responsible for certifying applicants, decertifying and recertifying BBEs, and maintaining the Certification List. DBD shall update, publish, and circulate to all Departments issuing bid documents the Certification List at least every other week. DBD shall maintain and publish at least every other week an updated list of BBEs, identifying each listed BBE based on the nature of the goods and/or services the BBE shall be certified to supply.
2. DBD shall collect, assemble and verify all information needed to establish the

eligibility of an applicant and continued eligibility of an BBE.

3. DBD shall attempt to make a certification decision within forty-five (45) business days of receipt of a complete application. An application is complete when it includes all required supporting documents.
4. DBD shall not certify applicants and shall decertify or deny recertification to BBEs that:
 - a. Fail to comply with eligibility requirements;
 - b. Fail to complete the application process;
 - c. Fail to provide full disclosure;
 - d. Falsify information;
 - e. Have been debarred by the County; or
 - f. Violate the provisions of Ordinance 94-95 or this Administrative Order.
5. To decertify an BBE, DBD shall either:
 - a. give notice to the BBE that the decertification decision will be effective at the completion of any appeal under this Administrative Order; or
 - b. suspend the certification of the BBE during any appeal of the decertification decision.

DBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to BBEs who are decertified or denied recertification.
6. DBD shall provide renewal procedures and/or forms to certified BBEs thirty (30) days prior to their certification expiration date.
7. DBD shall certify each BBE in the trade, commodity or service area in which the BBE demonstrates it is capable of performing. An BBE can be certified in an unlimited number of areas.
8. DBD may require applicants and BBEs to submit information regarding their business operations, including but not limited to a breakdown of the applicant's or BBE's workforce as to race, national origin and gender.

B. TERMS OF CERTIFICATION.

1. Certification is valid for a one (1) year period.
2. An BBE that has been denied recertification or that has been decertified is not eligible to apply for certification for up to thirty-six (36) months from the time of the denial or decertification. The reapplication waiting period is dependent on the severity of the cause of denial or decertification. For example, an BBE that is decertified after being found to be a front may not be eligible to reapply for the maximum period. An applicant in which the ownership or control is unclear due to lack of history may not be allowed to reapply for two (2) months.
3. An BBE must be certified by trade, commodity, or service area in order to be eligible to participate as an BBE on contracts in such trade, commodity, or service area. In addition, vendors, in order to be eligible to participate as an BBE subcontractor, must be certified in the trade, commodity, or service area in the trade in which they are to perform work as an BBE.
4. A business owner, alone or as a member of a group, shall own or control only one BBE at a time. A business owner, alone or as a member of a group, and any BBE, may not hold more than a twenty-five (25) percent equity ownership in any other BBE in the same or similar line of business. If a non-BBE in the same or similar line of business as an BBE has an equity ownership of such BBE that exceeds twenty-five (25) percent, the BBE shall not be certified or recertified.
5. Any BBE that fails to bid at a minimum, the lesser of three (e) or fifty (50) percent of the available projects, in its primary certified trade, commodity, or service, during the certification year, (twelve (12) calendar months) may be decertified or denied recertification.
6. Certified BBEs shall provide written notice to DBD of any changes that affect their eligibility as BBEs. BBEs shall submit a written statement describing the nature and stating the effective date of the change(s) to DBD within thirty (30) calendar days of the effective date of the change(s).
7. An BBE must have a valid certification at time of bid submittal, bid award and throughout the duration of any contract on which the BBE participates as an BBE. BBEs shall allow site visits by DBD staff to determine continuing compliance with certification requirements.
8. BBEs are responsible for applying for recertification at least forty-five (45) calendar days prior to expiration of their current certification.

C. CERTIFICATION PROCESS.

1. Interested parties may obtain the certification application from DBD and are encouraged to request an explanation of the certification process.
2. The applicant shall complete the certification application and submit it with all requested documentation to DBD.
3. The applicant, including BBEs seeking recertification, shall allow site visits by DBD staff to gain additional information regarding compliance eligibility requirements. DBD shall notify the applicant within fifteen (15) business days of receipt of a complete application if a site visit is required.
4. The applicant, including BBEs seeking recertification, shall attend, if requested by DBD staff, an eligibility review meeting to clarify information that was submitted in the application and accompanying documents or to gain additional information regarding the applicant's eligibility for certification. DBD shall notify the applicant within fifteen (15) business days of receipt of a complete application if an eligibility review meeting is required.
5. Applicants and BBEs shall provide DBD with all information that DBD reasonably requests to determine eligibility for certification.

D. ELIGIBILITY REQUIREMENTS.

1. Applicants and BBEs must be owned and controlled by one or more Black individuals (Note: Not-for-Profit or Nonprofit corporations are not eligible for certification).
2. BBEs must have a principal place of business in Miami-Dade County.
 - a. When determining whether the applicant has a principal place of business in Miami-Dade County, DBD shall consider evidence such as, but not limited to:
 1. The existence of a Miami-Dade County telephone number in the BBE's name or the name with which the BBE is doing business;
 2. Logs of telephone activity at the Miami-Dade County telephone number;
 3. Offices, premises related to business, or other facilities within the geographic boundaries of Miami-Dade County at which the goods or services to be provided are produced or performed;
 4. The existence and location of secretarial or other administrative

staff;

5. The existence of other offices or premises at which the same business is conducted; and
 6. The possession of licenses required to conduct the business in Miami-Dade County.
 7. The location at which the business records of the applicant concern are maintained; and
 8. The location at which the individual who manages the day-to-day operations spends the majority of his/her working hours.
3. To remain eligible for certification, BBEs must perform a commercially useful function.
 4. A Black individual, alone or as a member of a group, shall be eligible to have a business certified as a BBE only if a black owner personally possesses the licenses and satisfies the qualifying requirements established by a board regulating the industry in which certification is sought.
 5. A BBE certified on the effective date of the BBE ordinance (94-96) that is unable to meet these requirements shall be allowed to retain its certification for two (2) years from this date.
 6. A Black individual, alone or as a member of a group, shall own or control only one (1) BBE at a time and shall not own and control another separate business certified under the Women Business Enterprise or Hispanic Business Enterprise Programs.
 7. An BBE may compete for contracts that are set-aside under the Women Business Enterprise and Hispanic Business Enterprise Programs if the BBE is also certified in accordance with those programs.
 8. When investigating the ownership and control of an applicant or an BBE, consideration shall be given, but not limited to, the following elements:
 - a. All securities constituting ownership and/or control of a business for purposes of establishing the business as an BBE shall be held directly by a Black. No securities held in trust shall be considered.
 - b. The contributions of capital and expertise by the Black owner to acquire interest in the business shall be real and substantial. Examples of insufficient contributions may include, but are not limited to, a note payable to the business or to those of its part-owners who are not Black,

or the mere participation of the Black individual as an employee, rather than as a manager.

9. An BBE shall not be subject to any formal or informal restrictions that limit the customary discretion of the Black owner.
10. If there are part owners of the business who are Non-Black, and who are disproportionately responsible for the operation of the business, then the business shall not be considered an BBE. Where the actual day-to-day management of the business is handled by individuals other than the owner, those persons who have the ultimate power to hire and fire the managers shall be considered as controlling the business.
11. An applicant that has undergone a recent change in ownership or control from non-Black, to all or mostly Black-owned and controlled will be carefully scrutinized. Factors such as, but not limited to, the following shall be considered:
 - a. The reasons for the timing of the change in ownership of the business relative to the time that the contracts in the applicant's trade, commodity, or service area are advertised; and
 - b. Whether a Black individual identified as an owner who had a previous or continuing employee-employer relationship with present owners has actual management responsibilities and capabilities; and
 - c. The participation of one or more of the owners of the applicant firm in another firm in the same trade, commodity, or service area.
12. An BBE must perform a commercially useful function in any trade, commodity, or service area in which it is certified or seeking to be certified.
13. A business that acts as a contact for the purchase of goods and/or services from a third party supplier for the sole purpose of resale to the County provides no commercially useful function for purposes of certification.

[SIZE LIMITATIONS. \(See Appendix A\)](#)

III. JOINT VENTURES:

- A. Only joint ventures approved by DBD in accordance with this Administrative Order are eligible to participate as joint ventures in the BBE Program. Joint ventures must be lawfully established. The Black member of the joint venture must be certified as an BBE before the joint venture can be approved. Joint ventures that are owned and controlled by BBEs can participate under the BBE Program on contracts with set-asides, goals, bid preferences and BBE, selection factors. Joint ventures with less than fifty-one (51) percent BBE membership but equal to or greater than ten (10) percent

participation can participate under the BBE program only on contracts with bid preferences.

B. JOINT VENTURE RESPONSIBILITIES.

Joint ventures must submit prior to bid submission a Joint Venture Agreement containing the following information:

1. A description of the financial contribution of each member;
2. A list of the personnel and equipment used by each member;
3. A detailed breakdown of the responsibility of each member and the work
4. An explanation of how the profits and/or losses will be distributed;
5. The bonding capacity of each member; and
6. A description of any management or incentive fees for any of the members.
7. A statement of the percentage of the joint venture that is owned and controlled by the Black member(s) and the basis for claiming such percentage.
8. A copy of any required State certificates or registrations.

C. DBD RESPONSIBILITIES.

DBD shall collect, assemble and verify all information needed to determine if the level of participation of the BBE member of a joint venture is equal to or greater than fifty-one (51) percent or less than fifty-one (51) percent, but equal to or greater than ten (10) percent. DBD shall attempt to approve joint ventures within five (5) business days of receipt of a complete Joint Venture Agreement. A Joint Venture Agreement is complete when it includes all required supporting information. In determining the level of BBE participation in the joint venture, DBD shall review factors such as but not limited to:

1. The BBE member's share in the ownership, control, management responsibilities, risks, and profits of the joint venture compared to its level of participation in the venture;
2. The BBE member's performance of work compared to its experience;
3. The BBE member's use of the non-BBE member's employees and/or equipment to perform its portion of the project;
4. Lease of equipment or property by the BBE member and any hiring of

employees of the non-BBE member by the BBE member; and

5. The submitted Joint Venture Agreement.

IV. ANNUAL NOTIFICATION OF ANTICIPATED PURCHASES:

Each County department and agency, in conjunction with the annual budget process, shall compile a list of its anticipated major procurement and proposed services, repairs and equipment purchases for the fiscal year. Each department and agency shall forward the list by August 1 of each year to DBD for incorporation into the formulation of participation goals.

V. STATISTICAL REPORTING:

Each County department and agency, in conjunction with its contracting and purchasing activities shall compile and maintain a list of its contractors', subcontractors' and vendors' ownership demographics. These lists shall be updated at least quarterly and forwarded to the Department of Business Development. Bid documents shall require disclosure of the bidder's race, gender and ethnicity. Contract documents shall require that all requests for payment by the prime contractors include a list of all subcontractors who have performed work by race, gender and ethnicity.

VI. PARTICIPATION GOALS:

The County Manager shall recommend for adoption by the Board of County Commissioners by resolution participation goals at least on an annual basis.

A. INTRODUCTION.

Participation goals are expressed as a percentage of total anticipated County awards or expenditures within one market segment for a one-year period to be allocated to certified and registered BBEs competing in the market segment. Quantification of participation goals is accomplished through statistical estimates of market availability for each segment expressed as a percentage of the total for that segment.

Participation goals act as a trigger mechanism permitting the application of contract measures to County contracts. The adoption of a participation goal authorizes the use of contract measures. A participation goal is an expression of a desired future outcome. It is an estimate of the amount of County business that should be conducted in a relevant market segment in order to address and over time eliminate racial discrimination in that market segment. The lack of a participation goal for a market segment means that the County has not found statistical evidence of substantial disparities in that market segment warranting remedial action, or that the anticipated expenditures or awards for that market segment are not considered material.

Disparity in County contracting is remedied when the proportion of County awards or expenditures to BBEs in a given market segment is roughly the same as the

proportion of BBEs in that market segment. Market share is measured through data reported in the Survey of Minority-Owned Business Enterprises by the U.S. Department of Commerce, Bureau of the Census (hereafter "Census Data"), from County records of its contract awards and expenditures (hereafter "County data"), and other data that may be available and appropriate.

The relationship between contract measures and participation goals is nonlinear. A participation goal is satisfied by the cumulative effects of County contracts operating over a period of time. An individual contract measure may have a variable effect on the accomplishment of the participation goal. Its impact depends upon the size of the market segment, the size of the contract, the level of current participation of BBEs, the nature of the contract measure selected, the nature of work to be accomplished and the timing of payments. Although set-asides represent the most potent form of contract measure authorized by the ordinance, a set-aside of a relatively small contract in a relatively large market segment with a large disparity will result in only a small reduction of disparity. Although bid preferences represent the least potent form of remediation authorized, a bid preference resulting in a relatively large award in a relatively small market segment could have a profound effect on reducing disparity.

B. ESTABLISHMENT OF PARTICIPATION GOALS.

1. A relevant market segment shall be determined by forecasting County awards or expenditures for a one year period at least at the two-digit Standard Industry Code (SIC) level based on Census data and County data. For Census data, the two-digit SIC level is the lowest level at which some market analysis may be appropriate.
2. The County Manager, with information provided by DBD and other departments, shall recommend at least annually participation goals for BBEs with respect to award of county contracts in relevant market segments in accordance with this section.
 - a. All departments and the Public Health Trust shall cooperate with DBD and supply information needed to comply with this administrative order. The Department of Planning and Zoning shall provide updates and adjustment to the Census Data, as appropriate.
 - b. Participation goals shall be used as guidelines and shall not be construed as a ceiling or floor to BBE participation. They are benchmarks indicating the need to apply contract measures, not target levels of participation in any single contract or quotas to be attained in all circumstances,
 - c. BBE participation shall be projected for the life expectancy of contracts being carried over to future periods.

3. The following data collected by relevant market segment, if it is available, shall be considered in developing a participation goal:
 - a. The number of Black Business Enterprises in the geographic Miami-Dade County.
 - b. The gross annual sales of Black Business Enterprises in the geographic Miami-Dade County.
 - c. The total number of firms in geographic Miami-Dade County.
 - d. The gross annual sales of all firms in geographic Miami-Dade County.
 - e. The number of registered and certified BBEs in the County database.
 - f. The County's share of the relevant market segment.
 - g. The registered and certified BBEs' share by dollar award or expenditure of the County's market share.
 - h. The estimated point of parity between Black Business Enterprises' market share and the overall market by dollar award or expenditure.
 - i. The estimated capacity of the registered and certified BBEs to increase their County market share.
 - j. The estimated County awards or expenditures in the market for the following year.
 - k. Other data considered relevant by the County Manager.
4. Using the above estimates as factors the following indices shall be created:
 - a. Geographic Miami-Dade County Black Business Enterprises disparity index by SIC group $((\text{Total Geographic Miami-Dade County Black Business Enterprises Sales} / \text{Total Market Sales}) / (\text{Total Geographic Miami-Dade County Black Business Enterprises} / \text{Total Firms})) * 100$ (hereafter referred to as Geographic Miami-Dade Index)
 - b. County registered and certified BBEs disparity index for the market segment by SIC group or County Commodity Code $((\text{Total registered and certified BBEs dollars awarded by Miami-Dade County} / \text{Total dollars awarded to Miami-Dade County}) / (\text{Total registered and certified BBEs in Miami-Dade County} / \text{Total Firms certified and registered})) * 100$ (hereafter referred to as MDC Index)

- c. Such other indices considered appropriate by the County Manager.
- 5. If an index is below 100, then the following models shall be developed:
 - a. The estimated dollar awards or expenditure by the County to overcome disparity in County market share for the year.
 - b. The percentage of total County market expenditure required to overcome disparity.
 - c. The estimated capacity of registered and certified BBEs to perform additional county work and to thereby increase market share.
- 6. A participation goal is appropriate when:
 - a. The Geographic Miami-Dade County Index, the MDC Index or other index approved by the County Manager is substantially below 100 to warrant remedial action; and
 - b. Significant County awards or expenditures are forecast for that market segment; and
 - c. Analysis of the market segment indicates that unless contract measures are applied, there is little expectation of elimination of demonstrated substantial disparities.
- 5. The actual level of a participation goal is a judgment considering past disparity, future activity levels, and presence of Black Business Enterprises in a given market segment. The goals are expressions of the amount of disparity, and the ability of the County to effectively remedy discrimination the disparity represents using not only contract measures but also race neutral activities that encourage participation of Black Business Enterprises, within the constraints of the market.

B. CHALLENGES TO PARTICIPATION GOALS.

An aggrieved party may challenge pursuant to this subsection the establishment of or failure to establish a participation goal. A challenge shall be prospective only; it shall have no effect on bids to which the County Commission has voted to apply a contract measure.

- 1. An aggrieved party is an individual who owns or controls the operation of a business which does or expects to do business with Miami-Dade County; and
 - a. Whose business is or could be adversely affected by the application of a contract measure authorized by the participation goal being challenged;

or

- b. Whose business is or could be adversely affected by the failure to establish a participation goal in a particular market segment.
2. An aggrieved party shall file with DBD a document that contains all the following information:
 - a. The name, title, and business address of the aggrieved party;
 - b. An affidavit stating the aggrieved party owns or controls the operation of a business which does or expects to do business with Miami-Dade County and either how the application of a contract measure would adversely affect the business, or how the failure to apply contract measures to a part of a market segment would adversely affect the business; and
 - c. A statement containing:
 1. Statistical data and an analysis demonstrating that the participation goal was not calculated in accordance with this section, or as relevant to challenge the method chosen to establish the disparity index as found in Section B. 6 above; or
 2. Statistical data and analysis for a part of a market segment for which a participation goal was established demonstrating that in part of the market segment the Geographic Miami-Dade Index or the MDC Index is above 100 and anecdotal evidence establishing that the kinds of discrimination addressed by the ordinance are not experienced or have been remedied in this part of the market segment; or
 3. Statistical data and analysis demonstrating the need for a participation goal for a part of a market segment demonstrating that the Geographic Miami-Dade Index or the MDC Index is below 100 and anecdotal evidence establishing that the kinds of discrimination addressed by the ordinance are experienced in this particular market segment.
 4. Statistical analysis and anecdotal evidence that the participation goal is set too high or too low for that market segment.
 - d. DBD may establish rules for the form and manner of submission of the above information.
 - e. The County Manager or designee shall hear such challenge in accordance with procedures the County Manager shall establish. If the

County Manager finds the challenge has merit, the County Manager shall reevaluate the participation goal and make appropriate recommendations to the Board. If the County Manager finds the challenge does not have merit, the County Manager shall issue a decision to this effect.

- f. The aggrieved party may appeal the County Manager's recommendation or decision by noticing such appeal to the County Manager within ten (10) days of receipt of his opinion. The Board shall hear such appeal in accordance with procedures it shall establish.

D. MEASUREMENT OF PARTICIPATION GOALS.

1. Accomplishment of participation goals shall be based on calculations that consider the following factors for certified and registered BBEs as contractors, subcontractors, and joint ventures, to the extent data is available:
 - a. The total number of contracts awarded;
 - b. The dollar value of any and all contracts awarded;
 - c. The actual dollars expended by the County and received.
2. In addition to the required measurements, staff may consider forecasts and extensions of contract activity that go beyond the participation goal establishment period.
3. DBD and the Department of Planning and Zoning and such other personnel as the County Manager shall assign shall compile the information referred to in Section VI and present it to the County Commission on a quarterly basis.

VII. PROCEDURE FOR RECOMMENDATION OF CONTRACT MEASURES:

- A. Each individual contract, purchase or blanket purchase of goods or services, in excess of twenty-five thousand dollars (\$25,000), and each blanket or continuing order which can reasonably be anticipated to accumulate an aggregate amount of twenty-five thousand dollars (\$25,000) within twelve (12) months of the execution of the contract, shall be reviewed for application of contract measures. The procedure for applying these measures on such purchases is as follows:
 1. Each department or Department of Procurement Management (DPM), as applicable, shall review anticipated contracts and purchases of goods or services for application of contract measures. Departments that make purchases through DPM shall not be responsible for reviewing anticipated purchases. To facilitate identification of commodity or service opportunities, contracts shall be reviewed after approximately seventy-five (75) percent of the contract

documents, plans, and specifications have been completed.

2. Departments or DPM shall work in conjunction with DBD in recommending the contract measures that shall be applied. The department or DPM shall submit the appropriate items from the following: to the Director of DBD or designee:
 - a. For each recommendation of a contract measure, a memorandum that includes as appropriate a brief description of the:
 1. Purchase;
 2. The identification of commodity and service opportunities;
 3. Estimated dollar amounts for each commodity;
 4. A brief description of the project;
 5. Identification of trade opportunities;
 6. Estimated dollar amounts for each subcontracting area;
 7. A brief description of the service opportunities;
 8. Estimated dollar amounts for each service area; and
 9. A history of previous purchases to include the gender, ethnicity and/or race of previously successful vendors, service providers as appropriate for previous three (3) years.
 10. The recommended contract measure(s).
 - b. A memorandum, identifying and briefly describing all purchases, contracts or proposals, including justification for sole source, for which a no contract measure recommendation is being made, and information to support the recommendation of no measures.
3. DBD shall review the proposed contracts and the departmental recommendations. DBD shall review all submissions received prior to the published RC agenda deadline, develop a DBD recommendation and shall place the submissions on the agenda of the appropriate RC meeting.

VIII. APPLICATION OF CONTRACT MEASURES:

Contract measures are appropriate to apply to a given contract when there is a Participation Goal set for the market segment(s) involved in the contract; the forecast of future

expenditures by program area indicates that a contract measure will be appropriate for the contract.

A. GENERAL GUIDANCE.

1. The selection of any contract measure shall include consideration of the following:
 - a. The previous contracts used in the market segment;
 - b. The relative impact on demonstrated disparities;
 - c. The effects of other measures taken or reasonably expected to be taken in the market segment and their expected effects during the life expectancy of the contract;
 - d. The impact of the measure on potential competitors; and
 - e. Consideration of selection among the three (3) programs as set forth in Section IX below.

B. SET-ASIDES

1. A recommendation of a set-aside is appropriate when:
 - a. The Geographic Miami-Dade Index or the MDC Index is less than 80; and
 - b. The quality, quantity and type of opportunities provided by the contract, are appropriate for applying a set-aside; and
 - c. Staff advises that race-neutral measures (e.g., technical assistance, reducing the contract size, additional recruiting of BBEs) or other measures will not address effectively the demonstrated disparities in the market segment involved; and either
 - d. Prior to bid advertisement, there are at least three (3) BBEs available to provide the quality, quantity and type of opportunities afforded by the proposed contract; or
 - e. The County Commission or Public Health Trust determines prior to bid advertisement that there are at least two (2) available BBEs, to perform the set-aside contract and
 1. No BBE has been awarded a contract with the County or Public Health Trust for the goods or services to be advertised in the eighteen (18) preceding months; and

2. Prior to award of the contract the Department of Procurement Management has prepared an analysis of the price being offered by the recommended awardee to ensure that it is not excessive. The analysis shall include, but not be limited to, the comparison of existing data, if available, such as previous and/or existing contract awards with the data received from market research.
2. GUIDANCE ON SET-ASIDES. Set-asides should be used to remedy large disparities. Set-asides are most effectively applied to relatively small contracts. When possible, consideration should be given for splitting large contracts into smaller contracts to allow for greater program participation. In contracts for goods and services, considerations of financial strength, and other factors affecting the ability to perform are critical in the determinations of the availability of firms to perform a set-aside contract.

B. SUBCONTRACTOR GOALS.

A recommendation to apply a subcontractor goal to a particular contract is appropriate when:

1. The contract has identifiable opportunities for subcontracting which, according to normal industry practice are appropriate for subcontracting; and
2. The quality, quantity and types of opportunities provided are appropriate for applying a subcontractor goal; and
3. Effective competition exists for setting a particular subcontractor goal in that:
 - a. Prior to bid advertisement, there are at least three (3) BBEs available to provide the goods or services under the contract; or
 - b. At least two (2) BBEs are available and no BBE has participated as a subcontractor to a prime contractor having a contract with the County for the goods or services advertised in the eighteen (18) preceding months.
 - c. Where a subcontractor goal is applied when only two (2) BBEs are available, a bidder who fails to meet the goal may remain eligible for award if the bidder submits written evidence within two (2) business days from bid submission that the prices submitted by BBEs to the bidder were not reasonable compared to those submitted to the bidder by other non-BBE subcontractors. A BBE's bid will be considered reasonably competitive if its bid, for the same scope of work, is within 25% of the bid of comparably-sized non-BBE firms.

- d. Any combination of the above.

C. PROJECT GOALS.

Project goals may be utilized on bids for the purchase of goods and services, including Requests for Proposal (RFPs).

1. A recommendation to apply a project goal to a particular contract is appropriate when:
 - a. Prior to bid advertisement there are at least three (3) BBEs available to provide the goods or services under the contract; or
 - b. At least two (2) BBEs are available and no BBE has participated as a subcontractor to a prime contractor having a contract with the County for the goods or services advertised in the eighteen (18) preceding months.
 - c. Where a project goal is applied when only two (2) BBEs are available, a bidder who fails to meet the goal may remain eligible for award if the bidder submits written evidence within two (2) business days from bid submission that the prices submitted by BBEs to the bidder were not reasonable compared to those submitted to the bidder by other non-BBE subcontractors. A BBE's bid will be considered reasonably competitive if its bid, for the same scope of work, is within 25% of the bid of comparably-sized non-BBE firms.
 - d. Any combination of the above.

E. BID PREFERENCES AND BBE SELECTION FACTORS

1. A bid preference may be applied on all contracts other than sole source that are to be awarded to the responsive and responsible bidder with the lowest price, and that are not recommended to be set-aside.
2. An BBE selection factor may be applied to any request for proposals ("RFP") or similar invitations to bid that are not set-aside.
3. Neither a bid preference nor an BBE selection factor may be applied to a set-aside contract either may be applied to a contract with subcontractor goals.

IX. GUIDANCE ON PRIORITY OF MEASURES AMONG BBE, BBE AND WBE PROGRAMS:

A. GENERAL GUIDANCE.

In making recommendations for application of contract measures staff shall attempt to consider all three programs in addition to taking maximum advantage of the unique opportunities for remediation afforded by each contract. Potentially each contract contains a unique set of circumstances offering several possible permutations and combinations of contract measures authorized by the three (3) programs. In the Review Committee Process a large number of contracts are considered for the application of contract measures at the same meeting. Contract measures are applied on an individual contract basis, however, the program and measures selected for application to a given contract are a result of analyzing the entire contracting environment in light of the stated Participation Goals, progress to date and expected effects of previously adopted and other proposed contract measures. Each Review Committee session provides an aggregation of individual contract measures applied to further progress toward the Participation Goals of each of the three (3) programs. No single contract measure recommendation should be viewed in isolation of the other recommendations made and measures taken as part of the overall programs. The Review Committee provides a forum for the public review of contract measure recommendations, program progress and future program direction.

B. In the event that a given contract could have a contract measure effectively employed by more than one program, staff recommendation of the contract measures and the program selected shall be guided by comparing:

1. The latest Geographic Miami-Dade Index and MDC Index for the market segments for the groups under consideration; and
2. The relative effectiveness in meeting the participation goals afforded by the contract measures for each group; and
3. Opportunities for measures on related contracts; and
4. Progress toward accomplishing the participation goals for the market segments for the groups under consideration.

X. DOCUMENTATION TO REVIEW COMMITTEE:

DBD shall present the following to the Review Committee (RC):

- ### **A.**
- For each recommendation of a goal or set-aside, a copy of the department's recommendation; a memorandum briefly describing the analysis of the contract and basis for providing a recommendation; letters of intent to bid for set-aside contracts and a recommendation report that includes a listing of all trade, commodity, or

service areas on which availability was established and subcontractor or project goals were based.

- B. For each contract in which a contract measure from more than one program is recommended, a brief memorandum discussing the basis for the recommendation.
- C. A brief memorandum identifying and briefly describing all purchases for which a bid preference or BBE selection factor recommendation is being made; and
- D. A brief memorandum identifying all purchases for which a no measures recommendation is being made and providing information to support the recommendation.

XI. DEPARTMENTAL RESPONSIBILITIES:

- A. DBD shall prepare standard bid provisions. Each department and the Public Health Trust must use these standard bid documents for all contracts with contract measures unless DBD approves substitute bid documents. When bid documents for contracts with goals are advertised, they shall include a current Certification List.
- B. Departments shall submit recommendations of the RC for set-asides to the Board for approval. RC recommendations for all other contract measures shall either go to any committee with jurisdiction over the contract, or directly to the Board for approval. DBD shall notify departments of the recommended contract measures.
- C. Subsequent to a recommendation by the RC and prior to contract advertisement, each department shall advise DBD of any change in the scope of work of a contract. DBD shall review the change and recommend to the County Manager whether the contract requires further review by the RC due to the change in the scope of work. Each department shall advise DBD of post-award changes in scope and all change orders that require Board of County Commissioner's approval shall be submitted to DBD. DBD shall review the changes and change orders and recommend to the County Manager whether the contract requires further review by the RC due to the change in the scope of work.
- D. Each department shall advise DBD of any contract advertisement dates that are in excess of one hundred twenty (120) days of the initial RC recommendation to apply a set-aside or a goal in order to allow DBD to identify any changes in availability. All contracts not advertised within six (6) months after review by the RC must be resubmitted to the RC to re-establish availability.

XII. REVIEW COMMITTEE:

The Review Committee (RC) is responsible for recommending to the County Manager whether to apply one or more contract measures to a contract.

- A. The members of the RC shall be: Director, Department of Business Development; President, Public Health Trust; Director, General Services Administration; Director, Public Works Department; Director, Miami-Dade Aviation Department; Director, Miami-Dade Water and Sewer Department; or their designees; and four (4) individuals named by the County Manager. The County Manager shall designate one member to be chairperson. A quorum of the RC shall be five (5) members. Staff assistance shall be provided by DBD.
- B. The RC shall meet monthly or more frequently as needed. It shall publish a schedule of meetings, listing the meeting locations, dates, times and agenda deadlines for submission of departmental recommendations to DBD. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.
- C. The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Manager.
- D. The Review Committee may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Manager may accept, reject, modify or otherwise alter the RC recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Manager's recommendations.
- E. The RC shall hear appeals as provided in Section XIX of this Administrative Order.

XIII. CONTRACT ADMINISTRATION - SET-ASIDES:

- A. An BBE awarded a set-aside contract shall not transfer to a non-BBE through subcontracting or otherwise any part of the actual work of the contract unless bid documents expressly and specifically permit such transfer as consistent with normal industry practice [for example, drop-shipping of goods from a manufacturer to the County department where the BBE has actual and legal responsibility for billing and performance of the contract] or the BBE requests and receives prior to bid award an approval letter from DBD [for example, a Black vendor needs to rent a particularly expensive piece of equipment with labor support to perform a specific task in the contract and requests approval from DBD].
- B. An BBE that performs the work of the set-aside contract with its own forces may count such work towards reducing the BBE goal applied to the contract by a maximum of fifty (50) percent.
- C. The department that oversees a contract, DPM, or DBD, may request the RC to recommend that bonding requirements for a set-aside contract be limited or waived. Such recommendation shall only be made on set-aside contracts less than or equal to two hundred thousand dollars (\$200,000) and as authorized by Section 255.05, Florida Statutes. This recommendation shall accompany the set-aside

recommendation.

XIV. CONTRACT ADMINISTRATION - PROJECT OR SUBCONTRACTOR GOALS:

Project or subcontract goals may be applied to a contract when estimates made prior to bid advertisement identify the quality, quantity and type of opportunities in the contract and BBEs are available to afford effective competition in providing a percentage of these identified goods and services. After a bid is advertised with an BBE goal, it may be reduced only with the approval of the Board of County Commissioners.

A. BIDDER RESPONSIBILITIES.

Bidders on contracts to which a subcontractor goal has been applied must submit a completed Schedule of Participation at the time of bid submission. The Schedule of Participation constitutes a written representation by the bidder that to the best of the bidder's knowledge the BBEs listed are qualified and available to perform as specified. The Schedule of Participation is a commitment by the bidder that if awarded the contract, it will enter into subcontracts with the identified BBEs for the scope of work at the price set forth in the Schedule of Participation.

1. In contracts with subcontractor or project goals for Black Business Enterprises, an BBE also certified as a Woman or Black Business Enterprise shall be counted toward meeting the goal for one category only. The prime bidder shall declare at bid submission toward which subcontractor goal a business enterprise certified in more than one category shall count.
2. Bidders who fail to submit the Schedule of Participation shall be considered non-responsive.
3. Bids that contain a defective Schedule of Participation may be voidable. Examples of defects include but are not limited to, an incomplete Schedule, the listing of an unidentifiable BBE and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule.
 - a. Expenditures to subcontracting BBEs shall be counted toward meeting specified goals as follows:
 1. One hundred percent (100%) of the expenditures to an BBE that performs a commercially useful function in the supply of goods or services required for the fulfillment of the contract;
 2. One hundred percent (100%) of the expenditures to BBEs that subcontract work further to non-BBEs, only if bid documents expressly and specifically permit such subcontracting as consistent with normal industry practice, or the bidder or BBE, requests and receives prior to

bid award an approval letter from DBD;

3. One hundred percent (100%) of the expenditures to BBE vendors, working as subcontractors, that perform actual work with their own forces;
 4. None of the expenditures to an BBE that acts essentially as a conduit to transfer funds to a non-BBE unless bid documents expressly and specifically permit such transfers as consistent with normal industry practice or the bidder or BBE requests and receives prior to bid award an approval letter;
 5. Bidders that are BBEs and bidders that are joint ventures that are owned and controlled by one or more BBEs, may use their own forces to meet up to fifty (50) percent of a specified goal.
4. All bidders must submit Letters of Intent to the Contracting Officer by 4:00 p.m. on the second business day following bid opening. Failure to submit letters of intent within the specified time shall render the bid non-responsive. Submission of a defective form shall render the bid voidable. Expenditures to BBEs on a Schedule of Participation that are not confirmed by a properly executed Letter of Intent shall not count toward the goal.
 5. Bidders whose bids do not meet the specified goal, in order to remain eligible, must submit to the Contracting Officer by 4:00 p.m. on the second business day following bid submission, evidence proving the lack of available BBEs to afford effective competition to provide the goods or services to meet the goal. To prove lack of availability, bidders must submit the following:
 - a. Unavailability Certificates either completed and signed by the BBE or completed and signed by the bidder explaining the contacts with the BBE, statements or actions of the BBE showing unavailability, and the reason(s) why the BBE's signature could not be obtained; and
 - b. A listing of any bids received from an BBE, the scope of work and price of each bid, and the bidders' reasons for rejecting each bid; and
 - c. A statement of the bidders' contacts with DBD for assistance in determining available BBEs; and
 - d. A description of the bidders' process for soliciting and evaluating bids from BBE; and

- e. Bidders may establish an BBE as unavailable if its bid is not reasonably competitive with comparable bids of non-BBEs for the same scope of work.
6. Bid documents shall include documentation demonstrating the basis for the subcontractor or project goal established in the contract. Any bidder may challenge or protest the goal by submitting to DBD or the Contracting Officer no later than the time of bid submission written reasons for such challenge or protest. Challenges or protests to an BBE goal by bidders after the time of bid submission or based on reasons not provided in writing prior to bid submission, shall not be considered by the County Commission.

B. COUNTY RESPONSIBILITIES

1. After considering the quality, quantity and type of opportunities provided by the contract, and the availability of BBEs to afford effective competition in providing the goods or services required under the contract, each department or DPM will recommend to DBD the type and level of and or contract measure that could be applied.
2. DBD shall review the Schedules of Participation, Letters of Intent, and Unavailability Certificates to determine compliance with the goal stated in the bid documents. The Compliance Monitor shall seek to meet with a bidder before recommending that the Contract Officer determine non-compliance. This written recommendation shall be forwarded to the bidder and the Contract Officer.
3. In the event the Contracting Officer receives a recommendation of non-compliance from the Compliance Monitor, he or she will conduct a hearing at which the bidder shall be afforded an opportunity to present data supporting its compliance with the goal. The contracting officer shall consider the evidence and make a determination as to compliance.
4. The Compliance Monitor or Contracting Officer may not determine the bidder is in compliance when the primary reason for lack of available BBEs is the inability of the BBE to obtain bonding required by the successful bidder but not required by the surety.

XV. CONTRACT ADMINISTRATION - BID PREFERENCES AND SELECTION FACTORS:

A. BID PREFERENCE.

1. **ELIGIBILITY.** Bidders claiming a bid preference shall complete and

submit with their bid a claim of bid preference. The Compliance Monitor shall determine whether the bidder qualifies for the bid preference for the specified contract. In the event that a bidder qualifies for a bid preference in more than one category for the specified contract, the bidder shall be awarded the largest preference. Only one preference shall be awarded per bidder per contract. Bid preferences shall be given to:

- a. Bidders who are BBE;
 - b. Bidders who demonstrate significant utilization;
 - c. Bidders who are joint ventures approved under Section III of this Administrative Order.
2. The bid price will depend on the method of award. Examples of award methods include, but are not limited to, price per item, per group or in the aggregate.
 3. Bid preferences may only be applied to contracts where the estimated aggregate contract value exceeds \$25,000.
 4. PREFERENCE LEVEL. Bid documents for contracts with bid preferences shall state the following bid preferences which will be given to qualified bidders:

Bid Price	BBEs	Significant Utilization of BBEs	Joint Venture BBEs =>51%	Joint Venture BBEs <51%
>0<75,000	10.0%	7.50%	5.0%	3.75%
75,000<125,000	5.0%	3.75%	2.50%	1.25%
125,000<250,000	4.0%	3.00%	2.00%	1.00%
250,000<500,000	3.0%	2.25%	1.50%	0.75%
500,000<1,000,000	2.0%	1.50%	1.00%	0.50%
1,000,000<2,000,000	1.0%	0.75%	0.50%	0.25%

On contracts greater than two million dollars (\$2,000,000), the bid preference shall only be calculated for the first two million dollars of the bid price. The bid preference shall be calculated and subtracted from the total bid price. This difference shall be used in evaluating the bid. The bid preference is used only to calculate an amount to be used in evaluating the bid and does not affect the contract price.

5. DEMONSTRATING SIGNIFICANT UTILIZATION.

- a. DBD shall prepare and make available on a monthly basis a list BBEs that have held valid certifications during the prior twenty-four (24) months.
- b. Bidders claiming a bid preference based on significant utilization shall demonstrate such significant utilization by submitting evidence including but not limited to the following:
 - 1. Bidders' total purchases of goods and services in the prior twenty-four months.
 - 2. Bidders' total purchases of goods and services in Miami-Dade County in the prior twenty-four months.
 - 3. Bidders' total purchases from BBEs in the prior twenty-four months, identifying each BBE.
 - 4. Bidders' total purchases from BBEs in the prior twenty-four months, identifying each BBE that was not pursuant to any governmental contract or Black Business Enterprise Program requirement with which the bidder complied.
 - 5. Data showing lack of availability of BBEs.
 - 6. A description of the bidders' systematic efforts to eliminate discrimination against BBEs in its purchasing operations.
- c. Based on its review of the evidence, DBD shall issue a letter stating the bidder has demonstrated significant utilization or the reasons why the bidder has failed to demonstrate significant utilization.

B. BBE SELECTION FACTOR.

- 1. **ELIGIBILITY.** Bidders claiming to be evaluated or selected based on an BBE selection factor must complete and submit with their bid a claim for an BBE selection factor. The Compliance Monitor shall determine whether a bidder qualifies for an BBE selection factor by meeting one of the following criteria:
 - a. Bidders are BBEs;
 - b. Bidders demonstrate significant utilization of BBEs;

- c. Bidders are joint ventures approved under Section (III) of this Administrative Order that are owned and controlled by one or more BBEs.

2. EVALUATION/SELECTION CRITERIA.

- a. Bid documents with an BBE selection factor that assign weights to evaluation and/or selection criteria shall assign a 10% weight to the BBE selection factor.
- b. If weights are not assigned to all evaluation or selection factors, the BBE selection factor shall be used as the deciding factor in the event bids are otherwise evaluated to be substantially equal.
- c. Any committee formed to evaluate a bid with an BBE selection factor shall include a voting representative from DBD.

3. DEMONSTRATING SIGNIFICANT UTILIZATION. Bidders claiming an BBE selection factor shall demonstrate significant utilization in the same manner as bidders claiming a bid preference in Section XVA5 of this Administrative Order.

XVI. PROMPT PAYMENT:

It is the County's intent that all firms including BBEs providing goods or services to the County shall receive payments promptly in order to maintain sufficient cash flow.

A. DBD RESPONSIBILITIES.

- 1. DBD shall furnish the Finance Department with current Certification Lists. DPM shall notify DBD of all awards on bids, or RFPs that were set-aside, or where a goal was established. DBD shall notify the Finance Department, or County agency processing the payable, by memorandum, on the first of each month.
- 2. Bid documents for contracts with goals shall require the successful bidder to promptly review billings from BBEs listed on the Schedule of Participation and, on those amounts not in dispute, to make payment within thirty (30) days of its receipt of the billing.
- 3. DBD may investigate reported instances of late payment to BBEs.

B. FINANCE RESPONSIBILITIES. Finance shall review billings from BBEs and make payment on those amounts not in dispute within thirty (30) days of receipt of billing.

C. SUCCESSFUL BIDDER RESPONSIBILITIES. The successful bidder on a contract with goals shall promptly review billings from BBEs listed on the Schedule of

Participation. On those amounts not in dispute, the successful bidder must make payment within thirty (30) days of its receipt of the billing.

XVII. CONTRACT ADMINISTRATION - COMPLIANCE AND MONITORING:

- A. **ACCESS TO RECORDS.** Successful bidders and BBEs shall permit the County to have access during normal business hours to books and records relating to the bidder's compliance with the contract measures applied to the contract or relating to BBE compliance with certification requirements. Such books and records include but are not limited to corporate documents, charters, organizational filings, tax filings, registrations, licenses, stock registrations, partnership agreements, contracts, subcontracts, joint venture agreements, checking accounts, journals, ledgers, correspondence, and documents and records between the bidder or the BBE and other entities. This right of access shall be granted for one year after completion of the work or full payment of contract obligations, whichever comes last, or for one year after the expiration of BBE certification.
- B. **MONTHLY REPORTING.** The successful bidder on a project with goals shall submit monthly a Utilization Report and an Employment Data Report to the Contracting Officer on or before the tenth working day following the end of the month the report covers. Standard reporting forms shall be given to the successful bidder by the Compliance Monitor. The Utilization Report is to be completed by the successful bidder. The Employment Data Report is to be completed by each BBE listed on the Schedule of Participation and is to be submitted by the successful bidder. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.
- C. **DEVIATIONS FROM THE SCHEDULE OF PARTICIPATION.**
 - 1. In the event that during the performance of a contract a BBE is not able to provide the goods or services specified on the Schedule of Participation, the successful bidder must locate an BBE to substitute for the unavailable BBE unless the bidder can prove the lack of an available BBE to provide the goods or services to be provided by the prior BBE. The successful bidder must receive approval from the Contracting Officer, revise the Schedule of Participation to include the substitute BBE, and obtain a Letter of Intent from the substitute BBE. A successful bidder that cannot secure a substitute BBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all BBEs contacted, and the date of contact for each BBE.
 - 2. The Compliance Monitor shall be responsible for monitoring the performance of the successful bidder regarding compliance with contract measures applied to the contract. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of BBEs from that described on the Schedule of Participation and make recommendations regarding compliance

to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the goal stated in the contract that shall be monitored include but are not limited to:

3. Termination of an BBE's subcontract;
4. Reduction in the scope of work to be performed by an BBE;
5. Modifications to the terms of payment or price to be paid to an BBE;
6. Failure to enter into a contract with an BBE.

XVIII. ADMINISTRATIVE PENALTIES:

A. DEBARMENT.

1. The County may debar a BBE or a non-BBE for violation of, or non-compliance with, the provisions of Ordinance 94-95, this Administrative Order, or implementing bid documents.
2. Violations that may result in debarment include but are not limited to:
 - a. Falsifying or wrongfully withholding information in the BBE certification, bidding, or reporting processes;
 - b. Failing to perform a commercially useful function or subcontracting to an BBE by a non-BBE that knew or should have known the BBE could not perform a commercially useful function. When determining whether the BBE performs a commercially useful function, DBD shall consider factors such as but not limited to:
 1. Whether actual work is performed by the BBE. Actual work includes drop shipping when the BBE has actual and legal responsibility for billing and performance of the contract. Brokering is considered to be actual work when it is consistent with normal industry practice.
 2. Whether further subcontracting by the BBE is consistent with normal industry practice;
 3. Whether the BBE subcontractor has entered into bonding agreements that shift to another the expenses, risks, or responsibilities of the work for the purpose of meeting bonding requirements

3. Debarment procedures shall comply with Administrative Order 3-2, Section VI.
- B. DECERTIFICATION. Violation of certification requirements are addressed in Section (II) of this Administrative Order.

XIX. APPEALS PROCESS:

- A. This appeals process does not apply to appeals of decisions made pursuant to bid documents implementing the BBE Program when such bid documents provide procedures for appeals of such decisions.
- B. Upon a denial of certification, a desertification, a determination of non-compliance with the requirements of this Administrative Order, Ordinance 94-95, or implementing bid documents, which decision will be final unless appealed, the Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process.
- C. The affected party may appeal the determination by filing a written appeal in writing with the Director of DBD within fourteen (14) days of receipt of the notice.
- D. DBD shall forward all written appeals to the RC. The RC or a committee thereof appointed by the chairperson shall hear all appeals and forward recommendations regarding the appeal to the County Manager.
- E. Decisions by the County Manager shall be final unless the County Commission agrees in its sole discretion upon request by the affected party to review the County Manager's decision.

This Administrative Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Steve Shiver
County Manager

APPENDIX A

E. SIZE LIMITATIONS.

Only Black Business Enterprises that are "small business concerns" as delineated in accordance with this Section E may be BBEs. The term "small business concern" is defined by 13 Code of Federal Regulations, Chapter 1, Part 121, Subpart A, and the tables found at 13 Code of Federal Regulations, Chapter 1, Part 121.601 (Attachment). These regulations promulgated by the Small Business Administration are essentially restated in paragraphs below, except "self certification" is not permitted, and shall be updated, as necessary.

1. Any BBE that exceeds the size limits established shall be allowed to retain its certification for one additional year from the date it is formally notified it has exceeded the size limits
2. Any such BBE may have its certification extended provided the BBE demonstrates that it continues to experience the kinds of racial discrimination addressed by this section.
3. AFFILIATION DETERMINATION.
 - a. General rule.
 1. Except as otherwise noted, size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included.
 2. Except as otherwise provided in this section, concerns are affiliates of each other when either directly or indirectly
 - i. One concern controls or has the power to control the other, or
 - ii. A third party or parties controls or has the power to control both, or
 - iii. An identity of interest between or among parties exists such that affiliation may be found.
 - b. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.
 - c. Nature of control in determining affiliation.

1. Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.
 2. Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.
 3. Control can arise through management positions where a concern's vote stock is so widely distributed that no effective control can be established.
- d. Identity of interest between and among persons as an affiliation determinant. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.
- e. Affiliation through stock ownership.
1. A person is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control fifty (50) percent or more of its voting stock.
 2. A person is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than fifty (50) percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.
 3. If two or more persons each owns, controls or has the power to control less than fifty (50) percent of the voting stock of a concern; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

- f. Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.
- g. Affiliation under voting trusts.
 - 1. If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.
 - 2. Agreements to divest (including agreements in principle) are not considered to have a present effect on the power to control the concern.
- h. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another concern.
- i. Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated.
- j. Affiliation with a newly organized concern. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the concern is furnishing or will furnish the other concern with

subcontracts, financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

- k. Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that its economic viability would be in jeopardy without such contracts/business.
- l. Affiliation under joint venture arrangements.
 - 1. A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.
 - 2. For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a concern for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.
 - 3. Concerns bidding on a particular procurement or property sale as joint ventures are affiliated with each other with regard to performance of the contract. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.
 - 4. An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venturer affiliated on the contract with the prime contractor. In determining whether subcontracting arises to the level of affiliation as a joint venture, DBD considers whether the prime contractor has unusual reliance on the subcontractor.

5. Even though a concern might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.
- m. Affiliation under franchise and license agreements. In determining whether the franchiser controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchise has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee may not be controlled by the franchiser by virtue of such provisions in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

4. ANNUAL RECEIPTS.

- a. In size determinations where the standard is annual receipts, size eligibility requires that the concern may not exceed the annual receipts in that standard.
- b. Definitions. For the purpose of determining annual receipts of a concern:
 1. Accrual basis means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them.
 2. Claim of right has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).
 3. Receipts is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term receipts excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing

authority.

4. Regular books of account means the general ledger or other book of final entry and, if used, the journals or other books of original entry.
5. Completed fiscal year means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.
6. Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

c. Period of measurement.

1. Annual Receipts of a concern which has been in business for three (3) or more completed fiscal years means the arithmetic annual average revenue of the concern over its last three (3) completed fiscal years (total revenue compiled over the entire three-year (3) period would be divided by three).
2. Annual Receipts of a concern which has been in business for less than three (3) fiscal years means the arithmetic annual average revenue over the time period the concern has been in business. (Total revenues compiled over the period the concern has been in business, divided by the number of weeks, including fractions of a week, the concern has been in business, multiplied by fifty-two (52)).
3. Annual Receipts of a concern which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short year. See paragraph 3.c.5. of this section. The short period may appear at the beginning, middle or end of the three year calculation period.

d. Method of determining annual receipts.

1. Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenues shown on the Federal Income Tax return of the concern may be used in determining annual receipts. Subject to the exception in paragraph 3.c.4. of this section, revenue shown on the regular books of account or the Federal Income tax return on a basis

other than accrual must be restated to show revenue on an accrual basis for all fiscal years.

2. Where the Federal Income tax return of a concern, restated if necessary pursuant to paragraph (d)(1) of this section to reflect the percentage of completion method, shows its annual receipts to be less than seventy-five (75) percent of the applicable size standard, the concern need not restate its revenue to an accrual basis prior to determining annual receipts.
3. Where a short period is included in the concern's most recent three (3) years, annual receipts are calculated by dividing the sum of the receipts of the short year and the receipts of the two (2) full fiscal years by the sum of the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average receipts) by fifty-two (52).

e. Annual receipts of affiliates

1. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before certification, the annual receipts in determining size status include the receipts of both the applicant and the affiliate. Furthermore, this aggregation of the receipts of both the applicant and its affiliates applies for the entire applicable averaging period used in computing size (usually the preceding three (3) complete fiscal years) rather than only for the period after the affiliation arose.
2. The annual receipts of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three complete fiscal years), but was not an affiliate at the time of certification, are not included within the computation of annual receipts in making size determinations. This exclusion of annual receipts of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

5. EMPLOYEES.

- a. The term employees means all individuals employed on a full-time, part-time, temporary, or other basis. Such other basis may exist, for example, where individuals are provided by an independent employment contractor in an apparent effort to circumvent these

regulations. The totality of the circumstances should be considered in determining whether employees of an independent contractor are employed on another basis including but not limited to:

1. Did the company engage and select the employees?
 2. Does the company pay the employees wages and/or withhold employment taxes and/or provide employment benefits?
 3. Does the company have the power to dismiss the employees?
 4. Does the company have the power to control and supervise the employees' performance of their duties?
 5. Did the company procure the services of the employees from any employment contractor involved in close proximity to the date of certification application?
 6. Does the company dismiss employees from its own payroll and replace them with employees from any employment contractor involved? Were they replaced soon after their dismissal by the company?
 7. Are the individual employees supplied by any employment contractor, the same individuals that were dismissed by the company?
 8. Do the employees possess a type of expertise or skill that other companies in the same or similar lines of business normally employ in-house (as opposed to procuring by sub-subcontract or through an employment contractor)?
 9. Do the employees perform tasks normally performed by the regular employees of the business or which were previously performed by the company's own employees?
 10. Were the employees procured through an employment contractor to do more than fill in for regular employees of the company who are temporarily absent?
 11. Does the contract with the independent contractor have a term based on the term of an existing Government contract?
- b. In the size determinations where the standard is number of employees, size eligibility requires that the concern may not exceed the number of employees in that standard.

1. Number of employees means the average employment of the concern, including employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed twelve (12) calendar months.
2. In computing average employment, part-time and temporary employees are counted as full-time employees for each applicable pay period.
3. If a concern has not been in business for twelve (12) months, number of employees means the average employment of the concern, including affiliates, during each of the pay periods which it has been in business.
4. If the concern has acquired an affiliate or has been acquired as an affiliate during the applicable averaging period or before certification application, the number of employees in determining size status includes both the applicant and the affiliate. Furthermore, this aggregation of the employees of both the applicant and its affiliates applies for the period used in computing size (usually, the preceding twelve (12) months) rather than only for the period after the affiliation arose.
6. The employees of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding twelve (12) months), but was no longer an affiliate at the time of certification application, are not included within the computation of the number of employees in making size determinations. This exclusion of a former affiliate applies during the entire period used in computing size.